also fall there. See *Brewer* v. *Herbert* and *Neponsit Realty Co.* v. *Judge, supra.* Professor Williston answers this by saying that in the case of loss the thing itself is changed in nature, admitting that increase belongs to the vendee. WILLISTON ON CONTRACTS, § 951. But suppose the premises were residential property on which oil was subsequently discovered. Would not the nature of the subject matter be changed also? The Massachusetts court in the principal case makes the rule for equity the same as the rule for law. *Wells* v. *Calnan,* 107 Mass. 514; following *dicta* in *Thompson* v. *Gould,* 20 *Pick.* 134, where the contract was unenforceable because of the Statute of Frauds. It would be convenient to have the same rule both in law and equity. But if the rule at law be so crystallized that it cannot be changed, there is no reason for making the equity rule, which, it is submitted, is a juster rule, conform to it. The court in the principal case says nothing about possession. Professor Williston recommends that the rule should be that the risk should pass upon transfer of possession, on the theory that the intention of the parties is that the property is to pass at a future time, not necessarily the time for conveyance, and that if the vendee is given immediate right to possession title is retained as security for payment,—a short way of accomplishing the same result as a mortgage back on conveyance. WILLISTON ON CONTRACTS, § 940. There is support for the possession theory; see *Good* v. *Jarrard,* 93 S. C. 229; *Sewell* v. *Underhill, supra* (where the court says that there is the added fact that purchaser was in possession). But it is submitted that if possession of the vendee is a short way of accomplishing a "mortgage," so is a land contract a short way of getting rid of the risk of loss on the part of the vendor, and of assuming the chance of increase in value on the part of the vendee. Incidentally, possession of the vendor subsequent to the contract may be regarded as a high form of security, which the parties surely can accomplish by their contract. The fact that the vendor usually will have property of his own on the premises, when he is in possession, is surely enough to guarantee that he will bestow reasonable care. See discussion by Dean Pound, and cases cited, in 33 HARV. L. REV. 813, 326-827.

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF EMPLOYMENT—SPORTIVE ACT OF CO-EMPLOYEE.—Applicant's intestate, while devoting his time to his work, was killed by the sportive act of a co-employee in shooting air at a high pressure into his body *per rectum* by means of a compressed air hose used in the employment. *Held,* not an accident "arising out of the employment," within the Workmen's Compensation Act. *Payne* v. *Industrial Comm.* (Ill., 1920), 129 N. E. 122.

On the general subject of liability under Workmen's Compensation Laws for sportive acts of fellow servants, see note to *Leonbruno* v. *Champlain Silk Mills,* 128 N. E. 711, in 19 MICH. L. REV. 456. The opinion in the principal case places considerable emphasis upon the lack of actual knowledge by the employer of use of the air hose for horseplay. But *quaere,* whether such actions were not "reasonably to be expected," under the doctrine of the case aove cited, especially since the employees involved were only 15 to

17 years of age. *Accord* with the principal case, see *Federal Rubber Mfg. Co.* v. *Havolic,* 162 Wis. 341; *Ballard's Adm'x* v. *Ry. Co.,* 128 Ky. 826; *Tarpper* v. *Weston-Mott Co.,* 200 Mich. 275. *Contra, Robinson* v. *Melville Mfg. Co.,* 165 N. C. 495. The case of *In re Loper* (Ind., 1917), 116 N. E. 324, would seem to be distinguishable on the ground that the employer knew of the practice of committing pranks with the air hose.

WORKMEN'S COMPENSATION—LIABILITY OF EMPLOYER FOR UNSKILFUL TREATMENT OF EMPLOYEE BY PHYSICIAN.—Employee fractured his leg and was taken by his employer to a hospital, where the leg was set. The union of the fracture was made by overlapping the fragments, making the leg four inches shorter. To correct this vicious union the employee had the usual operation performed, but no union then took place, and from necessity the leg was amputated. In a claim for compensation, *held,* the employee suffered the loss of a leg as a result of his injuries and was entitled to compensation for that loss. *Booth & Flinn* v. *Cook* (Okla., 1920), 193 Pac. 36.

Where death or an aggravation of the injury results to the employee from an operation or medical treatment made necessary by an injury, the question is often raised as to the liability of the employer. In cases where the medical attendant is guilty of neither negligence nor malpractice, the courts appear to concur in making the employer compensate for that death or aggravation. Thus, where a workman died from the effects of an operation conducted skilfully, it was found that he was injured by an accident making the operation necessary and that death resulted from an injury, and compensation was given accordingly. *Lewis* v. *Port of London Authorities* [1914], W. C. & Ins. Rep. 299. So, too, where an injury to the employee's finger caused gangrene, making two operations necessary, and the second operation,, conducted skilfully, resulted in pneumonia caused by the anaesthetic, it was held that the accidental injury was the proximate cause of death and compensation was granted. *Favro* v. *Board of Public Library Trustees,* 1 Cal. Ind. Acc. Com. Dec. 1. And where an employee's arm was cut by a saw, necessitating an immediate operation without time to prepare the patient for ether, and as a result he contracted ether pneumonia and died, compensation was given. *In re Raymond,* Mass. Work's Comp. Rep. (1913) 277. Where the malpractice of the medical attendant causes death or aggravates the injury of the employee, a few cases, including the English decisions, do not hold the employer liable for such increase of incapacity. Thus, where the employee broke his arm and, owing to unskilful medical treatment at a hospital to which his employer sent him, his arm did not and could not completely recover, the employer was not held liable for the unskilful treatment and compensation for this further injury was denied. *Della Rocca* v. *Stanley Jones & Co.,* 6 N. C. C. A 624. The court there based its decision on the ground that the injury resulting from the malpractice cannot be traced back to the first injury, but a new agency, malpractice, had intervened, for which the employer is not liable. In *Viita* v. *Fleming,* 132 Minn. 128, the question arose whether settlement by the employer, releasing himself from all claims